



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 11, 2012

Ms. Michele Tapia
Assistant City Attorney
City of Carrollton
1945 East Jackson Road
Carrollton, Texas 75006

OR2012-16287

Dear Ms. Tapia:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 467723.

The City of Carrollton (the "city") received a request for the police dashboard camera recording of a specified arrest and specified photographs. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor only seeks the police dashboard camera recording and specified photographs. Accordingly, the remaining information, which we have marked, is not responsive to the instant request. This ruling does not address the public availability of non-responsive information, and the city need not release such information in response to the request.

Next, we must address the city's procedural obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(e), within fifteen business days of receipt of the request the governmental body must submit to this office, among other items, written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld and a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e). In this instance, you state the city received the request for information on July 23, 2012. Accordingly, the fifteen-business-day deadline was August 13, 2012. The city submitted the required information, however, in an envelope postmarked August 14, 2012. *See id.* § 552.308(a) (deadline under the Act is met if document bears post office mark

indicating time within the deadline period). Consequently, we find the city failed to comply with section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. Open Records Decision No. 150 at 2 (1977). Although you raise sections 552.103 and 552.108 of the Government Code, these are discretionary exceptions to disclosure that protect only a governmental body's interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions), 586 (1991) (governmental body may waive section 552.108), 473 (1987) (section 552.103 may be waived). As such, sections 552.103 and 552.108 do not constitute compelling reasons to withhold information for purposes of section 552.302, and the city may not withhold any of the responsive information on those bases. As no further exceptions to disclosure have been raised, the city must release the responsive information.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Nneka Kanu
Assistant Attorney General
Open Records Division
NK/bhf

Ref: ID# 467723

Enc. Submitted documents

c: Requestor
(w/o enclosures)